Tax Parcel No 26-012 20-004
Prepared by Division of Parks & Recreation
Dept. of Natural Resources & Environmental Control
89 King's Highway, P.O. Box 1401
Dover, Delaware 19903

#### **CONSERVATION EASEMENT**

THIS GRANT OF EASEMENT made this 27m day of 5.2 1997 (this "Easement Agreement"), by and between H. RODNEY SHARP, III, TRUSTEE of H.R.S. Real Estate Trust u'a dated September 22, 1986, Party of the First Part, hereinafter referred to as "Grantors," and THE STATE OF DELAWARE, DEPARTMENT OF STATE, Party of the Second Part, hereinafter referred to as "Grantee."

#### WITNESSETH

WHEREAS, Grantors are the fee simple owners of a certain tract of land located in the City of Wilmington, New Castle County, the State of Delaware, identified in the New Castle County Assessment Office as Parcel Number 26-012.20-004 more particularly described in Exhibit A attached hereto and incorporated by reference, hereinafter referred to as the "Property"; and

WHEREAS, said Property has scenic, historic, and cultural resource values (collectively "Conservation Values") worthy of conservation protection and of great importance to the Grantors, and the people of New Castle County and the people of Delaware; and

WHEREAS, in particular, the Property contains Gibraltar, a main estate house built in 1844 with major expansions in the 1920s which exhibits architecturally significant characteristics of Italianate and Colonial Revival periods designed by locally and regionally renowned architects; and contains formal and informal gardens designed by a nationally renowned landscape architect, and both the structures and the gardens exhibit a high degree of site and structural integrity; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory ("Baseline Documentation") as of the date hereof, containing reports, maps, photographs, and other documentation of relevant features of the Property on file with Grantee and incorporated by this reference which the parties agree is an accurate representation of the condition of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant, and

WHEREAS, Grantors and Grantee are desirous of preserving the open state of the Property and further desire to conserve and protect the Property from any disruption and or other occurrences which might interfere with the beauty and unique character of the Property as it exists in its open and scenic state; and

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WHEREAS, Grantors hereby, as owners of the Property, do grant and convey unto Grantee the right to preserve and protect the Conservation Values of said Property in perpetuity, and

WHEREAS, Grantee is a department of the State government among whose purposes is the preservation, protection, or enhancement of land and buildings for their natural, scenic, historic, open space and cultural resource values ("Conservation Purposes"); and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come:

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Delaware and in particular 7 Del. C. Chapter 69, Grantors hereby voluntarily grant and convey to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

#### 1. PURPOSE

It is the purpose of this Easement Agreement to assure that the Property will be retained forever in its scenic and open condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, all in accordance with the terms hereof.

### 2. RESTRICTIONS ON USE

In order to accomplish, safeguard, and promote the purposes of the Easement Agreement set forth in Paragraph 1 above, Grantors hereby declare and covenant that the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Property.

- (A) No signs, billboards, or outdoor advertising structures shall be placed or maintained on the Property; except for a reasonable number of signs for resource protection, safety, boundary identification, management, interpretation of cultural and historic areas, and for such other purposes with express written approval of Grantee; except for the following rights Grantors hereby reserve as described in Paragraph 3 below.
- (B) No building, structure, improvement, or facility (hereinafter referred to as "Improvement") shall be constructed, repaired, remodeled, reconstructed, or maintained on or above ground on the Property; except for the following rights Grantors hereby reserve as described in Paragraph 3 below.
- (C) No subdivision of the Property shall take place without prior submission of written notification to the Grantee, that materially

adversely impairs or interferes with the Conservation Values of the Property.

- (D) No substance or material as landfill, trash, waste, or unsightly or offensive materials shall be placed or dumped on the Property except for temporary storage of trash and debris generated from the conduct of the Permitted Uses described in Paragraph 3 provided such trash and debris is placed in suitable containers and removed from the Property within a reasonable time.
- (E) No loam, peat, gravel, soil, rock, sand, or other material shall be deposited or placed on the Property, nor shall there be made any change in the general topography of the land; except for approved material associated with the following rights hereby reserved as described in Paragraph 3 below.
- (F) There shall be no excavation or removal of loam, peat, gravel, soil, rock, sand, or similar material, nor any change in the general topography of the land; except as associated with the following rights hereby reserved as described in Paragraph 3 below.
- (G) No other acts or uses shall be allowed which adversely affect the scenic, historic and cultural resource values of the Property except as associated with the following rights hereby reserved as described in paragraph 3 below.
- (H) The restriction on use shall not affect any commercial or residential use of the Property, which is not inconsistent with the terms of this Easement Agreement, and the right to continue such use is reserved to the Grantors, their heirs, executors, administrators, successors or assigns.

### 3. PERMITTED USES

Grantors hereby declare and covenant that the following uses are hereby permitted on the Property subject to the limitations contained herein, and shall apply forever to the use and enjoyment of the Property:

- (A) Grantors may repair and maintain existing Improvements Existing Improvements include a three-story stone dwelling, garage greenhouse complex, tool storage complex, gatehouse, stone brick temple structures, perimeter stone wall, driveways, walkway, and gardens.
- (B) A new construction addition of up to 4000 square feet may be built on-site. The new construction may be any combination of attached detached construction associated with the main house and the garage greenhouse complex. All new construction shall be on the north side of the existing buildings with the specific location and exterior design subject to express written approval of Grantee.

- (C) The east, south and west facades of the main house shall not be altered
- (D) Construction of new gardens, new parking areas, new driveways, and widening of existing driveways are permitted subject to express written approval of Grantee.
- (E) On the main house, window sashes shall be retained where possible or replaced in-kind. Replacement sash and storm window design shall be subject to express written approval of Grantee.
- (F) The significant architectural features, to the extent identified as such in the Baseline Documentation, of the following first floor rooms shall not be altered. Main entry hall including the staucase and west side fover entrance, during room to the north of the entry hall, living room at the southeast corner, library at the southwest corner, glasswalled conservatory on the south facade.
- (G) The remaining wooden trim shall be retained wherever possible, except as room rearrangement may necessitate removal. In such cases it shall be salvaged where possible and reused or remilled to match the remaining trim.
- (H) The following shall be retained, repaired or replaced where practicable: Terracing, belvedere, statuary, iron gates, and railings.
- (1) All new construction or rehabilitation of the exterior or interior areas covered under this Easement Agreement, including existing buildings and significant ground garden features, shall be consistent with the U.S. Department of the Interior's standards for the treatment of historic properties and subject to the express written approval of the Grantee.
- (J) Loam, peat, gravel, soil, rock, sand, or material may be excavated or removed for archaeological investigations, for the purposes of landscape and garden rehabilitation or new landscape installation or for temporary construction, replacement, repair, or maintenance of permitted underground utilities.
- (K) The Property may be maintained consistent with the limitations contained herein
- 4. LIMITATIONS ON USE OF CONSERVATION EASEMENT AREA FOR PURPOSES OF BUILDING DENSITY REQUIREMENTS

No portion of the Property may be used to satisfy land area requirements for the calculation of building density under zoning or subdivision laws, regulations, or ordinances for any lands adjacent to the Property.

#### 5. RESERVED RIGHTS

Grantors reserve to themselves, their personal representatives, heirs, successors and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement Agreement. Grantors also retain all responsibilities, costs, and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property.

#### 6. GRANTORS' DUTY TO NOTIFY

Grantors, prior to performing or permitting any activity described in this Easement Agreement which requires prior approval of Grantee, hereby agree to submit to Grantee for review and approval, the required information in writing forty-five (45) days prior to the date Grantors intend to undertake the activity in question. Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantors' written request, failure to respond being deemed an approval. Grantee's approval or authorization for any action hereunder requiring Grantee's approval or authorization may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with this Easement Agreement.

#### 7. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as follows:

> To Grantors: H.R.S. Real Estate Trust

c o H. Rodney Sharp, III, Trustee

Box 3779

Greenville, Delaware 19807

To Grantee:

Department of State

Division of Historical and Cultural Affairs

Hall of Records

Dover, Delaware 19901

Upon written notice from a party, or a successor in interest, to the other party hereto, any such notice, demand etc. shall be given to that party or successor at the address indicated in such notice.

#### 8. ENFORCEMENT RIGHTS OF GRANTEE

- To accomplish the purposes of this Easement Agreement, the following rights are conveyed to Grantee by this Easement Agreement:
  - (i) To preserve and protect the Conservation Values of the Property;

- (ii) To enter upon the Property at reasonable times in order to monitor Grantors' compliance herewith and otherwise enforce the terms of this Easement Agreement, provided that such entry shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
- (iii) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement Agreement and to require the restoration of such areas or features of the Property that may be damaged by any activity inconsistent with this document.
- (B) In the event that a violation of the terms of this Easement Agreement by Grantors or by a third party comes to the attention of Grantee, Grantee shall give written notice to Grantors or other violators of such violation and demand corrective action sufficient to cure the violation and restore the portion of the Property so injured. If the violation is not cured within thirty (30) days of the receipt of written notice from Grantee, or, where the required corrective action cannot be completed within 30 days, Grantors or other violators fail to commence such cure within said 30 day period and fail to continue diligently to cure the violation until finally cured. Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violations of the terms of this Easement Agreement, including damages for the loss of Conservation Values, and to require the restoration of the Property to its prior condition. If Grantee in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph 8 without prior notice to Grantors or without waiting for the period provided for cure to expire.
- (C) If Grantee's remedies at law for any violation of the terms of this Easement are inadequate, Grantee shall be entitled to the injunctive relief described in this Paragraph 8, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement Agreement. Actual damages or the inadequacy of otherwise available legal remedies need not be proven for Grantee to obtain the relief described in this Paragraph 8.
- (D) Any costs incurred by Grantee in enforcing the terms of the Easement Agreement against Grantors or other violators, including without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this Easement Agreement shall be borne by Grantors or other violators, respectively.

- (E) Grantee's rights under this Paragraph 8 apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement.
- (F) Nothing contained herein shall be construed to entitle Grantee to bring any action for any injury or change in the Property resulting from causes beyond Grantors' control including fire, flood or storm.

#### 9. PUBLIC ACCESS

Grantors shall open the Property for public access on at least four separate and distinct occasions per year, subject to such reasonable rules, regulations and fee schedules adopted by Grantors with notification to Grantee.

#### 10. HOLD HARMLESS

Grantors shall hold harmless, indemnify and defend Grantee and its Secretary, employees, agents, and contractors and their heirs, personal representatives, successors and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Indemnified Parties.

#### 11. MODIFICATION

This grant is made by Grantors with the understanding that the Conservation Purposes for which it is given may be protected or furthered notwithstanding the possibility that circumstances may arise that would justify modification of certain specific terms of this Easement Agreement. To that end, Grantors and Grantee may agree in writing to modify the terms of this Easement Agreement to the extent that such modification furthers or does not have an adverse effect on the Conservation Values to be protected by this grant, subject to any procedural requirements imposed upon Grantors or Grantee by law.

#### 12. CONDEMNATION

If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee as well as Grantors, shall be entitled to compensation in accordance with applicable law. Grantors agree that the grant of the Easement gives rise to a property right, immediately vested in Grantee, with a fair market value at least equal to the proportionate value that the Easement, at the time of this grant, bears to the value of the property as a whole. Accordingly, in the event of extinguishment of the Easement, Grantee on a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to the aforesaid proportionate value at the time of the extinguishment. Grantee shall use this compensation exclusively for the acquisition of interests in land for Conservation Purposes.

## 13. TRANSFER OF GRANTORS' INTEREST

Grantors agree that Grantee shall record the Easement Agreement and that the terms thereof shall be referenced in any subsequent deed or other legal instrument which conveys either the fee simple title or possessory interest in the subject Property. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer or such shorter period to which Grantee may agree. The failure of Grantors to perform any act required by this Paragraph 13 shall not impair the validity of the Easement or limit its enforceability in any way.

# 14. TRANSFER OF GRANTEE'S INTEREST

Grantee agrees that:

- (A) Grantee shall not transfer the Easement unless Grantee, as a condition of the transfer, requires that the Conservation Purposes, which the Easement Agreement is intended to advance continue to be carried out; and
- (B) All \*transfers of the Easement shall be restricted to organizations qualifying, at the time of transfer, as an eligible grantee under paragraph (c)(1) of Treasury Regulation Section 1.170A-14, as amended and replaced from time to time.

# 15. INTERPRETATION OF THIS EASEMENT AGREEMENT

This Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of the Conservation Easement and the policy and purpose of 7 Del. C. Chapter 69.

#### 16. NO FORFEITURE

Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

# 17. ACKNOWLEDGMENTS

- (A) Grantors have received and fully reviewed the Baseline Documentation and attest that it is a true, correct, and complete summary of the Conservation Values of the Property and is an accurate representation of the Property as of the date of this Easement Agreement.
- (B) Grantors attest that they are the owners of the Property and that the Property is not subject to a mortgage as of this date, or a release of lien has been signed and acknowledged, prior to approval of this document.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantors and Grantee have set their Hands and Seals the day and year above first written.

	H.R.S. REA	L ESTATE TRUST	(k)
Witness	By: H. RODN	NEY SHARP, III, TH	RUSTEE
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Witness Witness	BY: <u>E.</u>	retary of state Title	_
STATE OF THE ALE	)	*	•
COUNTY OF MEW CASTE	) SS. )	e **	
BE IT REMEMBERE A.D. 1997, personally came for the State and County RODNEY SHARP, III, TRI personally to be such, and ac GIVEN under my Hance	before me, the aforesaid, H.R USTEE, party knowledged the	Subscriber, a Notary S. REAL ESTATI to this Instrument, is Indenture to be his	y Public in and E TRUST, H known to me act and deed.
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STATE OF DELAWARE	) ) SS.	POTENT I	" unario
COUNTY OF KENT	)		
BE IT REMEMBERED, the 1997, personally came before in State and County aforesaid Edv Delaware, Department of State, to be such, and acknowledged and deed of said Department.	ne, the Subscrib vard J. Freel, So party to this in:	per, a Notary Public ecretary, on behalf of strument, known to r	in and for the f The State of the personally
GIVEN under my Hand	and Seal of Off	ice, the day and year	aforesaid.
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#### Exhibit A

ALL that certain lot, piece or parcel of land, situate in the City of Wilmington. New Castle County. Delaware being a portion of certain lands and premises late of H. Rodney Sharp, Jr., and being the parcel identified in the New Castle County Assessment Office as Tax Parcel No. 26-012.10-004, and being more particularly described in accordance with a Boundary Survey Plan prepared by Pennoni Associates, Inc., dated June 30, 1997, as follows, to-wit:

BEGINNING for the same at a point at the intersection of the northeasterly right of way line of Pennsylvania Avenue (at 60 feet wide), with the northwesterly right of way line of Greenhill Avenue (at 60 feet wide); thence along the northeasterly right of way line of Pennsylvania Avenue, North 53 degrees 19 minutes 09 seconds West, 423.85 feet to a point of intersection of the said northeasterly right of way line for Pennsylvania Avenue with a stone wall, being a line of this and other lands now or formerly of H.R.S. Real Estate Trust: thence along line of lands now or formerly of H.R.S. Real Estate Trust and along the aforesaid stone wall. North 27 degrees 39 minutes 52 seconds East, 602.00 feet to a point on the southeasterly right of way line of 10th Street (at 60 feet wide); thence thereby South 61 degrees 59 minutes 29 seconds East, 39.84 feet to a point of intersection of said southeasterly right of way line of 16th Street with the centerline of Brinkle Avenue (at 60 feet wide) (unopened and removed by resolution); thence continuing along said southeasterly right of way line of 16th Street and partly along a stone wall. South 62 degrees 01 minute 19 seconds East, 380.51 feet to a point of intersection of the said southeasterly right of way line of 16th Street with the said northwesterly right of way line of Greenhill Avenue: thence along the northwesterly right of way line of Greenhill Avenue and along a stone wall. South 27 degrees 48 minutes 47 seconds West, 666.11 feet to a point of intersection of the said northwesterly right of way line of Greenhill Avenue with the northeasterly right of way line of Pennsylvania Avenue, being the point and place of Beginning. Containing within these metes and bounds, 6.11 acres of land, more or less.